

Cover Sheet for:

Site Plan 8-02014

Site Plan Enforcement Agreement

SITE PLAN ENFORCEMENT AGREEMENT

This Agreement by and between Terrabrook Clarksburg, L.L.C. ("Applicant"), and the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Planning Board"), is effective the date signed by the Planning Board.

WHEREAS, § 59-D-3.3 of the Montgomery County Code ("Code") requires the Applicant, as part of the site plan review process, to enter into a formal agreement with the Planning Board; and

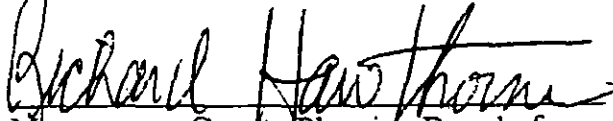
WHEREAS, the Code requires the Applicant to agree to execute all features of the approved site plan noted in § 59-D-3.23 in accordance with the development program required by § 59-D-3.23(m).

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of § 59-D-3.3 of the Code, the parties hereto agree as follows:

1. The Applicant agrees to comply with all of the conditions set forth in the Planning Board's Opinion and to execute all of the features of approved Site Plan No. 8-02014 ("Site Plan") (Exhibit "A"), including all features noted in § 59-D-3.23, in accordance with the approved Development Program required by § 59-D-3.23(m), attached and incorporated herein by reference.

2. This Agreement is binding on the Applicant, its successors and assigns, and on the land and improvements in perpetuity or until released in writing by the Planning Board.

IN WITNESS WHEREOF, the parties hereto have set our hands and seals as of the date and year set forth below.


Richard Hawthorne
Montgomery County Planning Board of
The Maryland-National Capital Park and
Planning Commission

10/14/04
Date

APPROVED AS TO LEGAL SUFFICIENCY

TAB

M-NCPPC LEGAL DEPARTMENT

DATE 10/10/04

TERRABROOK CLARKSBURG, L.L.C.,
a Delaware limited liability company

By: WESTERRA MANAGEMENT, L.L.C.,
a Delaware limited liability company,
its authorized representative


By: 
Tracy Z. Graves
Assistant Vice President

EXHIBIT B

RESIDENTIAL **DEVELOPMENT PROGRAM – SITE PLAN NO. 8-02014**

The Project will be developed in 1 phase as set forth in this Development Phasing Plan.

Phase	Units/ Lots in Phase	ID Common Areas in Phase	Local Recreational Facility in Phase *	Community Wide Recreational Facilities *	Plat Recordatio n Due Date for Phase	Begin Construction of Units (estimated)	Turnover Common Area/ Community Wide Facilities to HOA (estimated)
1	487 (including 46 MPDUs to be constructed along with, or preceding market rate units, and the last building built must not contain only MPDUs)	Parcel H, Block A; Parcels A, B, C, Block J; Parcels A, D, Block M; Parcel A, Block N; Parcel B, Block R; Parcels A, C, Block V; Parcel A, Block W; Parcel A, Block X	Nature trail, lawn seating, arbors, tot lot, pathway, park/school site	Community Center w/mtg. rooms, exercise room, pool; playgrounds; neighborhood parks and trails	3/26/05	10/01/03	06/01/05

* See Site Plan for details.

1. (a) Applicant will complete the following site plan elements prior to occupancy of units constructed in that phase or section, as applicable:

- (1) Paving of roads (excluding final topping)
- (2) Parking areas
- (3) Sidewalks (on-site)
- (4) Lighting (street and parking lot)
- (5) Grading
- (6) Landscaping (adjacent to building(s))
- (7) Foundation landscaping (single-family dwellings)
- (8) Pathways (only when located between two residential units)
- (9) Fences or noise berms

- (b) Applicant will complete the following site plan elements prior to 70% occupancy of approved units in that constructed phase or section, as applicable.

- (1) Sidewalks (off-site)
- (2) Pedestrian pathways and bikeways
- (3) Parking lot and perimeter landscaping
- (4) Recreation facilities
- (5) Landscaping

- (6) Final topping of roads and parking lots in areas with completed residential units
- (c) Street tree planting must progress as street construction is completed, but no later than (6) months after completion of the units adjacent to those streets.
- (d) Other stipulations as required by the PLANNING BOARD and detailed in Exhibit B-1, attached and incorporated herein. If no other stipulations are required, Exhibit B-1 to be attached stating "None."
- (e) Applicant shall send written notice to MNCPPC's Inspection Unit to initiate scheduling of site inspections at the following milestones:
 - (1) Applicant shall conduct a preconstruction meeting with MNCPPC staff and MCDPS sediment control staff prior to clearing and grading.
 - (2) At 70% occupancy.
 - (3) At 100% completion.

2. (a) Local Recreational Facilities

The Local Recreational Facilities, including all required improvements and associated Common Area for each Phase, shall be conveyed to the Association by the earlier of:

- (1) the date that applicants have closed on title to seventy percent (70%) of lots or units planned with such Phase; or
- (2) 36 months from the date of receipt of the initial building permit for a lot or unit in that Phase.

(b) Community-Wide Recreational Facilities

- (1) All Community-Wide Recreational Facilities and related Common Areas must be completed and conveyed to the Association as established in the above Phasing Plan. If Phases are delayed, all uncompleted Community-Wide Facilities must be completed and turned over no later than the earlier of the receipt of a building permit for the 341st unit within the area covered by Site Plan 8-02014 or by January 1, 2007 ("Community-Wide Facilities Completion Date"). All unconveyed Common Areas (whether or not associated with local or Community-Wide Recreational Facilities) also must be transferred to the Association by the Community-Wide Facilities Completion Date.

3. General Provisions

- (a) Before conveyance to the Association, all lot owners shall have the right to access and make use of all Common Areas, except those areas as may reasonably and necessarily be restricted by Applicant for temporary safety reasons.
- (b) Applicant must construct all Recreational Facilities and convey such facilities and related Common Areas within the time frames contemplated in the Phasing Schedule and in these binding elements. Applicant must arrange for inspections by staff to ensure that all facilities are timely, correctly and completely constructed.
- (c) All local Community-Wide Recreational Facilities shall be designed and constructed in accordance with Parks Department standards, criteria, and MNCPPC's adopted Recreational Facilities Guidelines.
- (d) Applicant shall warrant to the Association that all facilities have been constructed in a good and workmanlike manner and are fit for each of their intended purposes.
- (e) Unless the Planning Board has agreed to modify the Phasing Schedule, the Applicant's failure to timely complete and turn over facilities and Common Areas shall operate to preclude Applicant from receiving any additional building permits for that particular phase and all remaining phases until such time as the default is cured.
- (f) The Applicant may seek an amendment to any regulatory approval for the purpose of modifying the location and amount of real property comprising the common area and for the purpose of modifying the improvements to be constructed on such common area, including, but not limited to, the right not to construct such improvements, which amendment shall be reviewed by the Planning Board in accordance with applicable law. Such amendment shall be effective only if approved by the Planning Board.

4. Applicant has entered into a Land Exchange Agreement, dated June 16, 2004 ("Land Exchange Agreement"), and Construction and Grading Easement Agreement, dated June 28, 2004 ("Easement Agreement"), with Montgomery County Public Schools and MNCPPC concerning the park/school site, per Conditions 6 and 7 of Preliminary Plan No. 1-95042, repeated herein verbatim. To the extent the following conditions of preliminary plan approval conflict with any provisions in the Land Exchange Agreement or Easement Agreement, the provisions of the Land Exchange and Easement Agreements control:

- "6. *Dedication of the proposed park/school, as shown on the Applicant's revised preliminary plan drawing, is to be made to M-NCPPC. In order to facilitate the implementation of the*

combined park/school facilities, the following provisions apply:

- (a) M-NCPPC and the Applicant will enter into an agreement specifying that an exchange of land, identified as areas "B1" and "B2" on the park/school concept drawing set out on Circle Page 49 of the staff report, will occur prior to the execution of the Site Plan Enforcement Agreement.*
- (b) Dedication of the approximately 8 acre area, identified as Area "A" on the same park/school concept drawing identified above, will occur either at the time of recordation of the plats for the adjacent phase of the project or at such time as funds for construction of the future elementary school area added to the County CIP, whichever occurs first.*
- (c) The Applicant will provide site grading, infield preparation and seeding of the replacement athletic fields on the approximately 8 acres of dedicated land at a time which insures that there will be no disruption in the continued use of the existing athletic fields prior to completion of the replacement athletic fields.*
 - (i) In the event that dedication occurs when funds for the proposed school are shown in the CIP, Applicant will complete work on the replacement fields prior to the construction of the proposed school.*
 - (ii) In the event that dedication occurs prior to funding for the school being shown in the CIP, then upon construction of Street "F", as shown on the revised preliminary plan, Applicant will commence work on replacement of the baseball field. In addition, if at site plan it is determined that there is sufficient earth material on site to construct both replacement fields, then Applicant will also rough grade and seed the replacement soccer field when construction of Street "F" begins. Area tabulations for the proposed park/school complexes to be submitted for technical staff review at site plan. Final grading plan for the park/school site to be submitted for technical staff approval as part of the site plan application.*

7. *In accordance with Condition #6 above, Applicant to enter into an agreement with the Planning Board to provide for site grading, infield preparation and seeding of the replacement athletic fields in accordance with Parks Department specifications, as shown on the preliminary plan drawing, and as specified in the Department of Parks' Memorandum dated September 22, 1995. The construction of the replacement athletic fields must occur as specified in Condition #6. "*

5. Applicant shall comply with the terms of the Adequate Public Facilities Agreement for Clarksburg Town Center dated March 8, 1999, including the phasing requirements set forth in Condition No. 16 of Preliminary Plan No. 1-95042 as follows:

"16. The following phasing requirements are conditioned upon issuance of building permits for the subject preliminary plan:

(a) The first 44 dwelling units without any off-site road improvements.

(b) After the 44th building permit, the developer must start reconstruction of the southbound right turn lane along MD 355 at MD 121 to provide a "free flowing" movement.

(c) After the 400th building permit, the developer has two options:

1) Construction of A-260 from MD 355 to the southern access road of the commercial site (commercial access road between A-260 and P-5) and construction of P-5 across the stream valley into the residential area north of stream valley.

2) Construction of A-260 from MD 355 to the northern access road of the residential development and construction of a northbound right-turn lane along MD 355 at A-260 should be included in this phase.

(d) After the 800th building permit, the developer must start construction of remaining section of A260 to A-305 and intersection improvements at MD 355 and MD 121 to construct eastbound and westbound left-turn lanes along MD 121.

(e) Construction of A-305 from A-260 to MD 121 must begin when the developer starts building any of the residential units on blocks 11, 12, 13, and the northern half of block 10,"

Exhibit B-1

ATTACHED SITE PLAN OPINION

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